

**AMENDMENT TO H.R. 2356, AS REPORTED**  
**(SHAYS SUBSTITUTE)**

**OFFERED BY \_\_\_\_\_**

Add at the end the following title:

1 **TITLE VI—NO RESTRICTIONS ON**  
2 **FIRST AMENDMENT RIGHTS**

3 **SEC. 601. FINDINGS.**

4 Congress finds the following:

5 (1) The First Amendment to the United States  
6 Constitution states that, “Congress shall make no  
7 law respecting an establishment of religion, or pro-  
8 hibiting the free exercise thereof; or abridging the  
9 freedom of speech, or of the press; or of the right  
10 of the people to peaceably assemble, and to petition  
11 the Government for a redress of grievances.”

12 (2) The First Amendment affords the broadest  
13 protection to such political expression in order “to  
14 assure [the] unfettered interchange of ideas for the  
15 bringing about of political and social changes desired  
16 by the people. *Roth v. United States*, 354 U.S. 476,  
17 484 (1957).

18 (3) According to *Mills v. Alabama*, 384 U.S.  
19 214, 218 (1966), there is practically universal agree-  
20 ment that a major purpose of that Amendment was  
21 to protect the free discussion of governmental af-



1       fairs, “...of course including[ing] discussions of can-  
2       didates...”.

3           (4) According to *New York Times Co. v. Sul-*  
4       *livan*, 376 U.S. 254, 270 (1964), the First Amend-  
5       ment reflects our “profound national commitment to  
6       the principle that debate on public issues should be  
7       uninhibited, robust, and wide-open”. In a republic  
8       where the people are sovereign, the ability of the  
9       citizenry to make informed choices among can-  
10      didates for office is essential, for the identities of  
11      those who are elected will inevitably shape the course  
12      that we follow as a nation.

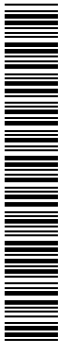
13          (5) The First Amendment protects political as-  
14      sociation as well as political expression. The con-  
15      stitutional right of association explicated in *NAACP*  
16      *v. Alabama*, 357 U.S. 449, 460 (1958), stemmed  
17      from the Court’s recognition that “[e]ffective advoca-  
18      cacy of both public and private points of view, par-  
19      ticularly controversial ones, is undeniably enhanced  
20      by group association.” Subsequent decisions have  
21      made clear that the First and Fourteenth Amend-  
22      ments guarantee “freedom to associate with others  
23      for the common advancement of political beliefs and  
24      ideas,” a freedom that encompasses “[t]he right to  
25      associate with the political party of one’s choice.’”



1       *Kusper v. Pontikes*, 414 U.S. 51, 56, 57, quoted in  
2       *Cousins v. Wigoda*, 419 U.S. 477, 487 (1975).

3           (6) In *Buckley v. Valeo*, the Supreme Court  
4       stated, “A restriction on the amount of money a per-  
5       son or group can spend on political communication  
6       during a campaign necessarily reduces the quantity  
7       of expression by restricting the number of issues dis-  
8       cussed, the depth of their exploration, and the size  
9       of the audience reached. This is because virtually  
10      every means of communicating ideas in today’s mass  
11      society requires the expenditure of money. The dis-  
12      tribution of the humblest handbill or leaflet entails  
13      printing, paper, and circulation costs. Speeches and  
14      rallies generally necessitate hiring a hall and publi-  
15      cizing the event. The electorate’s increasing depend-  
16      ence on television, radio, and other mass media for  
17      news and information has made these expensive  
18      modes of communication indispensable instruments  
19      of effective political speech.”.

20          (7) In response to the relentlessly repeated  
21      claim that campaign spending has skyrocketed and  
22      should be legislatively restrained, the *Buckley* Court  
23      stated that the First Amendment denied the govern-  
24      ment the power to make that determination: “In the  
25      free society ordained by our Constitution, it is not



1 the government but the people—individually as citi-  
2 zens and candidates and collectively as associations  
3 and political committees—who must retain control  
4 over the quantity and range of debate on public  
5 issues in a political campaign.”.

6 (8) In *Buckley*, the Court also stated, “The con-  
7 cept that government may restrict the speech of  
8 some elements of our society in order to enhance the  
9 relative voice of others is wholly foreign to the First  
10 Amendment, which was designed ‘to secure the  
11 widest possible dissemination of information from di-  
12 verse and antagonistic sources,’ and ‘to assure un-  
13 fettered exchange of ideas for the bringing about of  
14 political and societal changes desired by the peo-  
15 ple’ ”.

16 (9) The courts of the United States have con-  
17 sistently reaffirmed and applied the teachings of  
18 *Buckley*, striking down such government over-  
19 reaching. The courts of the United States have con-  
20 sistently upheld the rights of the citizens of the  
21 United States, candidates for public office, political  
22 parties, corporations, labor unions, trade associa-  
23 tions, non-profit entities, among others. Such deci-  
24 sions provide a very clear line as to what the govern-  
25 ment can and cannot do with respect to the regula-



1       tion of campaigns. See *Federal Election Comm'n v.*  
2       *Massachusetts Citizens for Life, Inc.*, 479 U.S. 238  
3       (1986); *Federal Election Comm'n v. National Con-*  
4       *servative Political Action Comm.*, 470 U.S. 480  
5       (1985); *California Medical Assn. V. Federal Election*  
6       *Comm'n*, 453 U.S. 182 (1981).

7           (10) The FEC has lost time and time again in  
8       court attempting to move away from the express ad-  
9       vocacy bright line test of *Buckley v. Valeo*. In fact,  
10      in some cases, the FEC has had to pay fees and  
11      costs because the theory is frivolous. See *FEC v.*  
12      *Christian Action Network*, 110 F.3d 1049 (4th Cir.  
13      1997), *aff'g* 894 F. Supp. 946 (W.D.Va. 1995);  
14      *Maine Right to Life Comm. v. FEC*, 914 F. Supp.  
15      8 (D.Me. 1996), *aff'd* 98 F.3d 1 (1st Cir. 1996),  
16      *cert. denied*, 118 S. Ct. 52 (1997); *Clifton v. FEC*,  
17      114 F.3d 1309 (1st Cir. 1997); *Faucher v. FEC*,  
18      928 F.2d 468, 472 (1st Cir.), *cert. denied*, 502 U.S.  
19      820 (1991); *FEC v. Colorado Republican Federal*  
20      *Campaign Comm.*, 839 F. Supp. 1448 (D. Co.),  
21      *rev'd on other grounds*, 59 F.3d 1015 (10th Cir.), va-  
22      cated on other grounds, 116 S. Ct. 2309 (1996);  
23      *FEC v. Central Long Island Tax Reform Imme-*  
24      *diately Comm.*, 616 F.2d 45, 53 (2d Cir. 1980);  
25      *Minnesota Citizens Concerned for Life, Inc. v. FEC*,

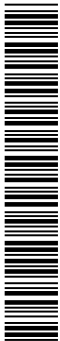


1 936 F. Supp. 633 (D. Minn. 1996), *aff'd* 113 F.3d  
2 129 (8th Cir. 1997), *reh'g. en banc denied*, 1997  
3 U.S. App. LEXIS 17528; *West Virginians for Life,*  
4 *Inc. v. Smith*, 960 F. Supp. 1036, 1039 (S.D.W.Va.  
5 1996); *FEC v. Survival Education Fund*, 1994 U.S.  
6 Dist. Lexis 210 (S.D.N.Y. 1994), *aff'd in part and*  
7 *rev'd in part*, 65 F.3d 285 (2nd Cir. 1995); *FEC v.*  
8 *National Organization for Women*, 713 F. Supp.  
9 428, 433–34 (D.D.C. 1989); *FEC v. American Fed-*  
10 *eration of State, County and Municipal Employees,*  
11 471 F. Supp. 315, 316–17 (D.D.C. 1979). Even the  
12 FEC abandoned the “electioneering communication”  
13 standard soon after the 1996 election due to its  
14 vagueness.

15 (11) The courts have also repeatedly upheld the  
16 rights of political party committees. As Justice Ken-  
17 nedy noted: “The central holding in *Buckley v. Valeo*  
18 is that spending money on one’s own speech must be  
19 permitted, and that this is what political parties do  
20 when they make expenditures FECA restricts.” *Colo.*  
21 *Republican Fed. Campaign Comm. v. Federal Elec-*  
22 *tion Comm’n*, 518 U.S. 604, 627 (1996) (J. Ken-  
23 nedy, concurring). Justice Thomas added: “As ap-  
24 plied in the specific context of campaign funding by  
25 political parties, the anticorruption rationale loses its



1 force. See Nahra, *Political Parties and the Cam-*  
2 *paign Finance Laws: Dilemmas, Concerns and Op-*  
3 *portunities*, 56 Ford L. Rev. 53, 105–106 (1987).  
4 What could it mean for a party to ‘corrupt’ its can-  
5 didates or to exercise ‘coercive’ influence over him?  
6 The very aim of a political party is to influence its  
7 candidate’s stance on issues and, if the candidate  
8 takes office or is reelected, his votes. When political  
9 parties achieve that aim, that achievement does not,  
10 in my view, constitute ‘a subversion of the political  
11 process.’ *Federal Election Comm’n v. NCPAC*, 470  
12 U.S. at 497. For instance, if the Democratic Party  
13 spends large sums of money in support of a can-  
14 didate who wins, takes office, and then implements  
15 the Party’s platform, that is not corruption; that is  
16 successful advocacy of ideas in the political market-  
17 place and representative government in a party sys-  
18 tem. To borrow a phrase from *Federal Election*  
19 *Comm’n v. NCPAC*, ‘the fact that candidates and  
20 elected officials may alter or reaffirm their own posi-  
21 tions on issues in response to political messages paid  
22 for by [political groups] can hardly be called corrup-  
23 tion, for one of the essential features of democracy  
24 is the presentation of the electorate of varying points  
25 of view.’ *Id.* at 498. Cf. *Federal Election Comm’n v.*



1        *MCFL*, 479 U.S. at 263 (suggesting that  
2        ‘[v]oluntary political associations do not...present the  
3        specter of corruption’).’ *Colo. Republican Fed. Cam-*  
4        *paign Comm. v. Federal Election Comm’n*, 518 U.S.  
5        604, 647 (1996) (J. Thomas, concurring). Justice  
6        Thomas continued: “The structure of political par-  
7        ties is such that the theoretical danger of those  
8        groups actually engaging in quid pro quos with can-  
9        didates is significantly less than the threat of indi-  
10        viduals or other groups doing so. See Nahra, *Polit-*  
11        *ical Parties and the Campaign Finance Laws: Dilem-*  
12        *mas, Concerns and Opportunities*, 56 Ford L. Rev.  
13        53, 97–98 (1987) (citing F. Sorauf, *Party Politics*  
14        *in America* 15–18 (5th ed. 1984)). American polit-  
15        ical parties, generally speaking, have numerous  
16        members with a wide variety of interests, features  
17        necessary for success in majoritarian elections. Con-  
18        sequently, the influence of any one person or the im-  
19        portance of any single issue within a political party  
20        is significantly diffused. For this reason, as the Par-  
21        ty’s amici argue, see Brief for Committee for Party  
22        Renewal et al. as Amicus Curiae 16, campaign funds  
23        donated by parties are considered to be some of ‘the  
24        cleanest money in politics.’ J. Bibby, *Campaign Fi-*  
25        *nance Reform*, 6 Commonsense 1, 10 (Dec. 1983).



1 And, as long as the Court continues to permit Con-  
2 gress to subject individuals to limits on the amount  
3 they can give to parties, and those limits are uni-  
4 form as to all donors, *see* 2 U.S.C. section  
5 441a(a)(1), there is little risk that an individual  
6 donor could use a party as a conduit for bribing can-  
7 didates. *Id.*”.

8 (12) As recently as 2000, the Supreme Court  
9 reminded us once again of the vital role that political  
10 parties play on our democratic life, by serving as the  
11 primary vehicles for the political views and voices of  
12 millions and millions of Americans. “Representative  
13 democracy in any populous unit of governance is un-  
14 imaginable without the ability of citizens to band to-  
15 gether in promoting the electoral candidates who  
16 espouse their political views. The formation of na-  
17 tional political parties was almost concurrent with  
18 the formation of the Republic itself.” *California*  
19 *Democratic Party v. Jones*, 530 U.S. 567 (2000).  
20 Moreover, just last year, a Federal court struck  
21 down a state law that included a so-called “soft  
22 money ban,” which in reality was a ban on corporate  
23 and union contributions to political parties—which  
24 as a factual matter is correct. The *Anchorage Daily*  
25 *News* reported:



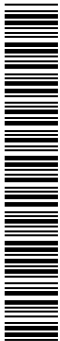
1           (13) A Federal judge says corporations and  
2           unions have a constitutional right to give unlimited  
3           amounts of “soft money” to political parties, so long  
4           as none of the money is used to get specific can-  
5           didates elected. In a decision dated June 11, U.S.  
6           District Judge James Singleton struck down a sec-  
7           tion of Alaska’s 1997 political contributions law that  
8           barred corporations, unions and other businesses  
9           from contributing any money to political candidates  
10          or parties. The ban against corporate contributions  
11          to individual candidates is fine, Singleton said. Pub-  
12          lic concern about the corrupting influence or cor-  
13          porate contributions on a specific candidate is legiti-  
14          mate and important enough to somewhat limit free-  
15          dom of speech and political association, the judge  
16          concluded. But contributions to the noncandidate  
17          work of a political party do not raise undue influ-  
18          ence issues and therefore may not be restricted, the  
19          judge concluded.

20           (14) Sheila Toomey, *Anchorage Daily News*  
21           (June 14, 2001) (reporting on *Kenneth P. Jacobus,*  
22           *et al. vs. State of Alaska, et al.*, No. A97–0272 (D.  
23           Alaska filed June 11, 2001)).

24           (15) Nor is speech any less protected by the  
25           First Amendment simply because the one making



1 the speech contacted or communicated with others.  
2 For some time, the Federal Election Commission  
3 held the view that such “coordination” (an unde-  
4 fined term), even of communications that did not  
5 contain express advocacy, somehow was problematic,  
6 and subject to the limitations and prohibitions of the  
7 Act. This view has been rejected by the courts. *Fed-*  
8 *eral Election Commission v. Christian Coalition*, 52  
9 F. Supp. 2d 45 (D.D.C. 1999). In fact, lower Fed-  
10 eral courts have held that even political party com-  
11 mittee limits on coordinated expenditures are an un-  
12 constitutional restriction on speech. *Federal Election*  
13 *Commission v. Colo. Republican Fed. Campaign*  
14 *Comm.*, 213 F.3d 1221 (10th Cir. 2000). Unless a  
15 party committee’s expenditure is the functional  
16 equivalent of a contribution (and thus not “coordi-  
17 nated”), it cannot be limited. See *Federal Election*  
18 *Commission v. Colo. Republican Fed. Campaign*  
19 *Comm.*, 150 L.Ed.2d 461, nt. 17, nt. 2 (J. Thomas,  
20 dissenting) (2001). As a factual matter, many party  
21 committee “coordinated” expenditures are not the  
22 functional equivalent of contributions. See Amicus  
23 Curie Brief of the National Republican Congres-  
24 sional Committee, *Federal Election Commission v.*



1       *Colo. Republican Fed. Campaign Comm.*, 150  
2       L.Ed.2d 461 (2001).

3           (16) Commentators, legal experts and testimony  
4       in the record echoes the need to be mindful of the  
5       First Amendment. Whether it is the American Civil  
6       Liberties Union, see March 10, 2001 ACLU Letter  
7       to Senate (and all cases cited therein) & June 14,  
8       2001 ACLU testimony before the House Adminis-  
9       tration Committee (and cases cited therein), or the  
10      counsel to the National Right to Life Committee and  
11      the Christian Coalition, see June 14, 2001 testimony  
12      of James Bopp before the House Administration  
13      Committee (and cases cited therein), experts across  
14      the political spectrum have thoughtfully explained  
15      the need to ensure the First Amendment rights of  
16      citizens of this country.

17           (17) Citizens who have an interest in issues  
18      have the Constitutional right to criticize or praise  
19      their elected officials individually or collectively as a  
20      group. Communication in the form of criticism or  
21      praise of elected officials is precious protected as  
22      free speech under the First Amendment of the Con-  
23      stitution of the United States.

24           (18) This Act contains restrictions on the rights  
25      of citizens, either individually or collectively, to com-



1       municate with or about their elected representatives  
2       and to the general public. Such restrictions would  
3       stifle and suppress individual and group advocacy  
4       pertaining to politics and government—the political  
5       expression at the core of the electoral process and of  
6       First Amendment freedoms—the very engine of de-  
7       mocracy. Such restrictions also hinder citizens’ abil-  
8       ity to communicate their support or opposition on  
9       issues to their elected officials and the general pub-  
10      lic.

11           (19) Candidate campaigns and issue campaigns  
12      are the primary vehicles for giving voice to popular  
13      grievances, raising issues and proposing solutions.  
14      An election, and the time leading up to it, is when  
15      political speech should be at its most robust and un-  
16      fettered.

17   **SEC. 602. NO RESTRICTIONS ON FIRST AMENDMENT**  
18                   **RIGHTS.**

19      Notwithstanding any provision of this Act, and in rec-  
20      ognition of the First Amendment to the United States  
21      Constitution, nothing in this Act or in any amendment  
22      made by this Act may be construed to abridge those free-  
23      doms found in that Amendment, specifically the freedom  
24      of speech or of the press, or the right of people to peace-  
25      ably assemble, and to petition the government for a re-



1 dress of grievances, consistent with the rulings of the  
2 courts of the United States (as provided in section 601).

